

STATE OF INDIANA            )     IN THE MARION CIRCUIT/SUPERIOR COURT  
                                  ) SS:  
COUNTY OF MARION        )     CAUSE NO. \_\_\_\_\_

STATE OF INDIANA,            )  
                                  )  
                  Plaintiff,     )  
                                  )  
                  v.             )  
                                  )  
AFFORDABLE SERVICE &        )  
CONSTRUCTION CO., INC.     )  
                                  )  
                  Defendant.    )

4900202 12PL 002059

**FILED**

DEC 17 2002

*Jack M. Taylor*  
CLERK OF THE  
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.
2. Defendant, Affordable Service & Construction Co., Inc. ("Affordable"), is an Indiana corporation engaged in business as a home improvement contractor, with a principal place of business located at 2538 S. Meridian Street, Indianapolis, Indiana.

**FACTS**

3. Since at least July 17, 1998, Affordable has entered into home improvement contracts with Indiana consumers.

4. On July 17, 1998, Affordable entered into an Assurance of Voluntary Compliance with the State of Indiana wherein Affordable agreed, in relevant part:

4. Respondent agrees, pursuant to Ind. Code §24-5-11-10, in every home improvement transaction to provide a completed home improvement contract to the consumer before it is signed by the consumer. Respondent agrees that the contract must contain at a minimum the following:
  - a. The name of the consumer and the address of the residential property that is the subject of the home improvement
  - b. The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
  - c. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
  - d. A reasonably detailed description of the proposed home improvements;
  - e. If the description required by Indiana Code §24-5-11-10-(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
  - f. The approximate starting and completion dates of the home improvements;
  - g. A statement of any contingencies that would materially change the approximate completion date;
  - h. The home improvement contract price; and
  - i. Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is a party to the home improvement contract with a legible printed or typed version of that person's name directly after or below the signature.
5. Respondent agrees, pursuant to Ind. Code §24-5-11-11, that before the consumer signs the home improvement contract and before the consumer can be required to make a down payment, the home improvement supplier must have agreed unequivocally by written signature to all of the terms of the home improvement contract.
6. Respondent agrees, pursuant to Ind. Code §24-5-11-12, that Respondent shall give a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it. The contract must also show the dates the supplier and each consumer executed the contract.

7. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from conducting any business activity in the State of Indiana unless those

*activities are in full compliance with the Home Improvement Contracts Act, Ind. Code Ch. 24-5-11-1, et seq.*

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9. *Respondent, in soliciting and/or contracting with consumers, agrees to fully comply with the Deceptive Consumer Sales Act, Ind. Code Ch. 24-5-0.5-1 et seq.*

A true and correct copy of the Assurance of Voluntary Compliance between the State of Indiana and Affordable is attached and incorporated by reference as Exhibit "A."

5. On or around January 11, 2002, Affordable entered into a written contract with Charlotte Smith ("Smith") of Indianapolis, Indiana, wherein Affordable agreed to replace, supply and install a gas furnace in Smith's home for a price of Two Thousand Four Hundred Seventy-Four and 00/100 Dollars (\$2474.00).

6. Defendant failed to provide Smith with a written home improvement contract that contained:

- a. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. any time limitation on the consumer's acceptance of the home improvement contract;
- c. the approximate starting and completion dates of the home improvement;
- d. a statement of any contingencies that would materially change the approximate completion date;
- e. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home

improvement contract with a legible or typed version of that person's name placed directly after or below the signature.

**COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT**

7. The service described in paragraph 5 above is a "home improvement" as defined by Ind. Code § 24-5-11-3.
8. The transaction referred to in paragraph 5 above is a "home improvement contract" as defined by Ind. Code § 24-5-11-4.
9. Affordable is a "supplier" as defined by Ind. Code § 24-5-11-6.
10. By failing to provide Smith with a completed home improvement contract containing the information referred to in paragraphs 6 above, Affordable violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.
11. The Defendant's violations of the Indiana Home Improvement Contracts Act referred to in paragraph 6 constitutes deceptive acts and subjects the Defendant to the remedies and penalties under Ind. Code § 24-5-0.5.

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS  
OF THE HOME IMPROVEMENT CONTRACTS ACT**

12. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 11 above.
13. The misrepresentations and deceptive acts set forth in paragraph 6 above were committed by Affordable with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Affordable Service & Construction Co., Inc., enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;

- (8) The home improvement contract price; and
- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

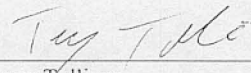
AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- b. on Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

- c. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana; and
- d. all other just and proper relief.

Respectfully submitted,  
STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:

  
Terry Tolliver  
Deputy Attorney General  
Atty. No. 22556-49

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STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF MARION     )

IN THE MARION CIRCUIT COURT

AVC NO. 98 AVC 060

IN RE: AFFORDABLE SERVICE & )  
      CONSTRUCTION CO., INC., )

Respondent.                )

**FILED**

JUL 17 1998

*Jack M. Taylor*  
CLERK OF THE  
MARION CIRCUIT COURT

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Jeffrey A. Modisett and Deputy Attorney General Janine M. Clements, and Respondent, Affordable Service & Construction Co., Inc., enter into this Assurance of Voluntary Compliance (Assurance), pursuant to Indiana Code §24-5-0.5-7.

It is acknowledged that violation of this Assurance constitutes prima facie evidence of a deceptive act as defined by Ind. Code §24-5-0.5-3. This Assurance is entered into without any adjudication of any issue of fact or law herein, and upon consent of the parties hereto.

It is hereby agreed that:

1. Respondent is an Indiana corporation with a principal place of business at 2538 S. Meridian Street, Indianapolis, Indiana 46225. At all relevant times Respondent has engaged in consumer transactions with Indiana consumers.
2. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives and assigns.
3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 et seq.

**EXHIBIT**

**A**

4. Respondent agrees, pursuant to Ind. Code §24-5-11-10, in every home improvement transaction to provide a completed home improvement contract to the consumer before it is signed by the consumer. Respondent agrees that the contract must contain at a minimum the following:

- (a) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (b) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (c) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (d) A reasonably detailed description of the proposed home improvements;
- (e) If the description required by Indiana Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (f) The approximate starting and completion dates of the home improvements;
- (g) A statement of any contingencies that would materially change the approximate completion date;
- (h) The home improvement contract price; and
- (i) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature.

5. Respondent agrees, pursuant to Ind. Code §24-5-11-11, that before the consumer signs the home improvement contract and before the consumer can be required to make a down

payment, the home improvement supplier must have agreed unequivocally by written signature to all of the terms of the home improvement contract.

6. Respondent agrees, pursuant to Ind. Code §24-5-11-12, that Respondent shall give a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it. The contract must also show the dates the supplier and each consumer executed the contract.

7. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code §24-5-11-1 et seq.

8. Respondent agrees to refrain from conducting any home improvements until it has first obtained all necessary licenses and building permits required by law.

9. Respondent, in soliciting and/or contracting with consumers, agrees to fully comply with the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq.

10. Respondent agrees to reimburse the Consumer Protection Division of the Office of the Attorney General for its reasonable costs of investigating this matter in the amount of Five Hundred and 00/100 Dollars (\$500.00) payable to the Indiana Office of the Attorney General upon the execution and return of this Assurance to the Attorney General's Office.

11. Respondent agrees to fully cooperate with the Office of the Attorney General in the resolution of any future complaints received by the Consumer Protection Division.

12. This Assurance does not constitute an approval by the Attorney General of any of Respondent's past or future business practices, and Respondent shall not make any representations to the contrary.

13. The Office of the Attorney General shall file this Assurance with the Circuit Court of Marion County.

IN WITNESS THEREOF, the parties have executed this Assurance this 10<sup>th</sup> day of

July, 1998.

STATE OF INDIANA

JEFFREY A. MODISSETT  
Attorney General of Indiana

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RESPONDENT

AFFORDABLE SERVICE & CONSTRUCTION  
CO., INC.

By: Dudley Wagers (Pres)  
Dudley Wagers, President

Dated: 6-14-98

Dated: \_\_\_\_\_

APPROVED AND ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Judge, Marion County Circuit Court